

USAWC STRATEGY RESEARCH PROJECT

NATIONAL SECURITY STRATEGY OF PREEMPTION

by

Lieutenant Colonel(P) Michael J. Arinello
United States Army

Professor John Bonin
Project Advisor

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ABSTRACT

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NATIONAL SECURITY STRATEGY OF PREEMPTION

Today humanity holds in its hand the opportunity to further freedom's triumph over all these foes. The United States welcomes our responsibility to lead in this great mission... America will act against such emerging threats before they are fully formed... in the new world we have entered the only path to peace and security is the path of action.

- George W. Bush,
in the National Security Strategy, Sep 2002

STRATEGY OF PREEMPTION

President Bush has promulgated a new strategy of preemption in his Administration's first National Security Strategy (NSS). Preemption, defined as the anticipatory use of force in the face of an imminent attack, has long been accepted as legitimate and appropriate under international law. In the new NSS, however, the Administration is broadening the meaning to encompass preventive war as well. At its core, the new strategy calls for the United States to use its unparalleled military strength to defeat the threat posed by terrorists and tyrants. Accordingly, the U.S may use force even without evidence of an imminent attack to ensure that a serious threat to the United States does not gather or grow over time.¹

Although the NSS's commitment to preempting emerging threats makes sense militarily, the strategy fails to clarify the distinction between preemption and preventative war- or to specify when preemptive force should be used. Further, it does not address the inherent risks associated with a preemption strategy.

DEFINITIONS

Preventive attack and preventive war designate proactive measures taken by a threatened nation to eliminate an anticipated threat. The preventive agent minimizes the threat by choosing the time, place and character of an initial attack and thus denies the threatening agent these advantageous choices. Diplomatic or other means of national power should be exhausted before taking preventative action to provide the opportunity for building domestic and international consensus for the preventive action and for legitimizing such action.

Anticipatory self-defense or striking an enemy before that enemy initiates his attack, is defined in four ways. The fundamental discriminators in these definitions are the distinctions between imminent and inevitable threats and attacks and war.²

- Preemptive Attack: An attack or raid initiated on the basis of incontrovertible evidence that an enemy attack is imminent.

- Preemptive War: A war initiated on the basis of expectation and/or evidence that an enemy attack is imminent.
- Preventive Attack: An attack or raid initiated on the belief that the threat of an attack, while not imminent, is inevitable, and that delaying such action would involve great risk.
- Preventive War: A war initiated on the belief that armed conflict, while not imminent, is inevitable, and that delaying such action would involve unacceptable risk.

The administration's new policy often merges all four definitions into the term preemption, so it is difficult to distinguish among them. According to the standard dictionary definition, "imminent" is defined as ; "to project...threaten...ready to take place...hanging threateningly over one's head, danger of being over run."³

Such definitions seem very subjective. For example, according to these definitions North Korean combat forces arrayed in attack positions along the boarder pose an imminent threat. However, they could remain in such a threatening posture for long periods of time, as they already have.

To ascertain imminence, it is necessary to determine the enemy's intent. An imminent threat, ready to take place, is closer in time than an inevitable one.

A truly imminent threat can be devastating if no immediate action is taken to deny it.⁴

USE OF FORCE UNDER INTERNATIONAL LAW

Title VII of the United Nations Charter, an international accord among universal members, governs the use of force among states. This treaty establishes a system of collective security based upon the ban of the use of force. Article 2 declares: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." The Charter provides for only two exceptions to the ban on the use of force, one of which is an intervention by the Security Council. In accordance with Article 39 of the Charter, as a precondition for armed conflict, the Security Council must have previously qualified the situation as a threat to international peace and security. Article 39 confirms that the Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security. Although Article 41 cites measures not involving the use of armed force, Article 42 authorizes

armed intervention: "Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security." The second exception to the prohibition of the use of force is the right of self-defense authorized in Article 51 of the Charter. If a state is the victim of an armed attack, it is allowed to use force in self-defense. Article 51 explicitly states that "nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations until the Security Council has taken measures necessary to maintain international peace and security."⁵

Although the basic tenets of Article 51 seem straightforward, their authorization of the traditional right of anticipatory self-defense is unclear. Interpreters seem to be divided into two camps. On one hand, some claim that Article 51 explicitly limits the use of force in self-defense to those circumstances in which an armed attack has actually occurred. Under this extreme interpretation, it would be unlawful to engage in any kind of preemptive actions. A potential victim would first have to become an actual victim before it would be able to use military force in self-defense. Even though Article 51 refers to an "inherent right" of self-defense, that inherent right could be exercised only following an open armed attack. Other analysts, however, reject this interpretation and claim that the intent of the Charter was not to restrict the customary right of anticipatory self-defense. They argue the reference in Article 51 to an "inherent right" legitimizes a continuation of the broad pre-UN Charter. They also point out that Article 51 explicitly limit self-defensive armed actions to situations wherein the defending party has already suffered an attack. Even so, Anthony Clark Arend asserts the language of the Charter is subject to differing interpretations about the permissibility of preemptive force.⁶

DETERMINING WHEN TO USE PREEMPTION

Legally a state victim of aggression does not need the authority of the UN Security Council to invoke its right of self-defense, especially when threatened by an "armed attack." However according to International Law, an armed attack can only be committed by states; in fact non-state actors are not subject to International Law. The issue is further complicated by the fact that there is no definition of the terms "armed attack" and "aggression." The UN General Assembly Resolution 3.314. comes the closest to an official definition. According to this Resolution, the following qualify as acts of aggression:

- the invasion or attack by the armed forces of a State of the territory of another State, or any military occupation or annexation;
- bombardment or use of any weapons by a State against the territory of another State;
- the blockade of ports or coasts of a State by the armed forces of another State;
- an attack by the armed forces of a State on the land, sea or air forces of another State;
- use of armed forces of a State which are within the territory of another State with the agreement of the receiving State in contravention of the agreement;
- action of a State allowing its territory to be used by (an)other State for perpetrating an act of aggression against a third state;
- the sending by or on behalf of a State of armed bands which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

When a given situation does not fit any of the mentioned categories there is a provision recognizing the Security Council's authority to determine an act of aggression in cases not contemplated in the resolution. Even so, Clara Portela contends a terrorist attack does not fit into any of these categories. Only actions carried out by states are accommodated in the definition.⁷ In the war on terrorism, the United States has entered uncharted territory.

HISTORY OF PREEMPTION

Under the regime of customary international law that developed long before the UN Charter was adopted, it was generally accepted that preemptive force was permissible in self-defense. The historical case that gave rise to anticipatory self-defense doctrine is the Caroline incident. During the first part of the nineteenth century, an anti-British insurrection was taking place in Canada. At the time, Canada was under British rule while the United States and Great Britain were in a state of peace. The Caroline, a ship owned by U.S. nationals, was allegedly providing assistance to the rebels in Canada. On the night of December 29, 1837, while the ship was docked on the U.S. side of the Niagara River, British troops crossed the river, boarded the ship, killed several U.S. nationals, set the ship on fire, and sent the vessel over Niagara Falls. The British claimed that they were acting in self-defense. Secretary of State Daniel Webster denounced the incident and the British government ultimately apologized. According to Arend, during diplomatic communications between the Americans and the British, necessity and

proportionality were two criteria noted as necessary when considering permissible self-defense including preemptive self-defense.⁸

Securing the nation's frontiers often required anticipatory action. For example, Gen. Andrew Jackson ignited an international crisis when he invaded Spanish Florida in 1818 and attacked Native Americans, along with two British citizens. Secretary of State John Quincy Adams told the Spanish ambassador that Spain's failure to preserve order along the borders justified preemptive American action. In 1904 President Theodore Roosevelt announced that the United States would intervene in the Western Hemisphere to uphold civilization. He believed the Europeans would deploy their navies to the hemisphere, seize national customs houses, and thus endanger U.S. security. Decades later, Franklin Roosevelt renounced his cousin's advocacy of the Monroe Doctrine and declared a Good Neighbor Policy. However he did not rule out the preventive use of force. After war erupted in Europe, he deemed it essential to supply the European democracies with munitions and food. In September 1941 when Nazi submarines attacked the U.S. destroyer Greer, Roosevelt misrepresented the circumstances surrounding the incident and declared, "This is the time for prevention of attack." He then warned that German and Italian vessels cruising in the North Atlantic would do so "at their own peril." Roosevelt justified the U.S. policy by analogy: "when you see a rattlesnake poised to strike, you do not wait until he has struck before you crush him."⁹

During the Cold War, preventive action became standard operating procedure. Without United States intervention in certain situations, second and third order effects would threaten U.S. security. Containment and deterrence in Europe did not preclude U.S. unilateral, preventive initiatives elsewhere. The United States took anticipatory action to deal with real and perhaps imagined threats in Central America, the Caribbean, Southeast Asia, and the Middle East. In each case freedom provided the rhetorical justification for the actions, just as President Bush now justifies the war in Iraq as necessary to bring freedom and democracy to the region. According to Melvyn Leffler, the Bush administration is not using preventive military action as its only, or even its principal tool. The Administration has hesitated to act preventively in Iran and North Korea, perhaps because the current risks are too great. This administration acts selectively, much as its predecessor's did.¹⁰

During the Clinton administration the use of unilateral, even preemptive, military power was considered. Prior to the September 11 attacks, the last strategy paper of the Clinton administration spelled out the nation's vital interests. Clinton declared to the national security team that the U.S. will do what we must to defend these interests which may involve the use of military force, including unilateral action, where deemed necessary or appropriate. In June

1995; Clinton signed Presidential Decision Directive 39 addressing counter terrorism in which the unclassified version suggests a preemptive stance. The United States would seek to identify groups or states that "sponsor or support such terrorists, isolate them and extract a heavy price for their actions."¹¹ In 1998 after the Al Qaeda attacks against U.S. embassies in Africa, Clinton authorized bombing Sudan's

Al-Shifaa chemical plant, which was suspected of manufacturing weapons for Osama bin Laden. There were many concerns within his administration about the legality of preemptive bombings against a civilian target especially against a nation that had never directly threatened the United States. But National Security Advisor Sandy Berger made a compelling case: "What if we do not hit it and then, after an attack, nerve gas is released in the New York City subway? What will we say then?"¹² According to Leffler, preemptive and unilateral use of U.S. military power was widely perceived as necessary prior to Bush's election.

According to the 9/11 Commission Report, Osama bin Ladin decided to go to war with the United States around 1996. By early 1998, the scope of this war was readily apparent in the second Fatwa issued on February 23; this Al Qaeda directive encouraged killing Americans and their allies-civilians and military- as an individual duty for every Muslim. Further, Muslims should execute their enemies in any country in which it is possible to do it in order to liberate the

Al Aqsa Mosque and the holy city Mecca from American's grip in order to remove their armies from the lands of Islam. These actions should be continued until Islam's enemies were totally defeated and posed no further threats to Muslims. Al Qaeda's political objective is to destroy the United States and, along with it, Western culture and civilization. Their ultimate goal is to establish a worldwide Islamic religious government based on the medieval model of the caliphates. The 9/11 Commission Report concluded that Bin Ladin and Islamist terrorists view America as the front of all evil like the head of the snake, and that it must be converted or destroyed. The report concludes that al Qaeda is waging a total war; its objective are as encompassing as was those of any of the major belligerents in World War II, when the Allies were determined to accept only the unconditional surrender of Nazi Germany and Imperial Japan, or as with the Soviet Union during the Cold War. Leffler concludes that totality in war is determined by an adversary's objective rather than a measure of the level of violence. Accordingly, following 9/11 President Bush attempted to translate the objective of the Global War on Terrorism into a national doctrine.¹⁴

However, the Bush Administration's designation of "the war on terror," was a fundamental error. How does a nation make war on terror? It's like trying to make war on sarcasm or like the failed war on drugs. Wars are declared on nations or nation states. The United States is not at

war with "terror" or even with terrorist groups generally. Some 100 terrorist groups are identified on the State Department list of terrorist organizations. The United States is not at war with all of them. Although various intelligence agencies for example may monitor the Irish Republican Army, the IRA has no history of specifically targeting Americans or U.S. interests in the United Kingdom or elsewhere. Nor is the United States at war with Kahane Chai, a Jewish terrorist group that attacks Palestinians, or the Liberation Tigers of Tamil Eelam in Sri Lanka.¹⁵ The administration should specifically identify the terrorist groups it wants to target.

To develop a successful national military strategy, U.S. political leaders not only need to identify the enemy, but also must clearly identify U.S. national objectives. President Bush stated in his September 20, 2001, address to the Congress and the American people that the enemy is Al Qaeda, along with Islamic fundamentalist groups that share Al Qaeda's aims, such as Hezbollah, and nations that support those groups, specifically Iran and Syria. But the President's message was generally neither received nor understood by the American people. If it had been clearly received, then the fighting in Iraq would be seen not as "the war in Iraq," but as the Iraqi theater of the larger war with

Al Qaeda and its associated groups and supporting nations. If the nature of the war had been clearly understood from the beginning, rather than presenting the case for invading Iraq based primarily on the assumption that the regime possessed chemical and biological weapons and was pursuing a nuclear capability, the President could have persuaded the nation and the world that invading Iraq was part of the war with Al Qaeda and that taking down the Saddam regime would isolate our primary enemy, Iran. Earl Tilford further contends that the American people also do not understand al Qaeda's objective to protract the conflict by attacking Americans and U.S. interests abroad and at home to wear down American resolve. Al Qaeda's strategy seeks to make a war-weary public force the U.S. government to change its policy from confrontation and pre-emption to appeasement.¹⁶

CONCEPT OF PREEMPTION STRATEGY

Destroying their settlements, spreading alarms, showing and keeping up a spirit of enterprise that will oblige them to defend their extensive possessions at all points is of infinitely more consequence to the United States of America than all plunder that can be taken

- Robert Morris, Letter to John Paul Jones, 1 February 1777

In President Bush's cover letter to the September 2002 National Security Strategy, he describes the most serious threats facing the United States and specifies the means that will be

used to address them. Notably, he declares, as a matter of common sense and self-defense, America will act against emerging threats before they are fully formed. It is clear from the cover letter and the text of the NSS that preemption is an important element of the Administration's overall strategy in the post- 9/11 environment. However, the concept is not constrained by the traditional definition of preemption, which calls for striking an enemy as it prepares an attack. Instead the Bush strategy includes prevention, striking an enemy before it is yet in a position to itself attack. This preventive strategy is principally directed at terrorist groups, or at extremist or "rogue" nation states. These two threats are linked, according to the NSS, by a combination of contemporary "radicalism and technology."¹⁷ In effect they pose a new kind or order of threat.

The Administration asserts that the prevalent Cold War strategy of deterrence is unlikely to succeed against rogue states and terrorists. The administration claims that these new enemies are not risk-averse: They view weapons of mass destruction, not as weapons of last resort, but as weapons of choice. The Administration thus argues that the classic doctrine of preemption must be broadened to deal effectively with these new threats.¹⁸

The President has also asserted that for centuries international law has recognized that nations need not suffer an attack before they can lawfully take action to defend themselves: The greater the threat, the greater is the risk of inaction - - and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy's attack. He further declares that the U.S. must adapt the concept of imminent threat to the capabilities and objectives of today's adversaries. He then expands the concept of preemption to actually include preventative war, which justifies a military response "even in the absence of specific evidence of a coming attack."¹⁹ Although the current strategy continues to refer to strategic deterrence, it does not clarify the difference between preemption and preventative war.

PREEMPTION VERSUS DETERRENCE

The current Bush strategy states that the US must build and maintain our defenses beyond challenge. We must maintain the capability to deter threats against U.S. interests, allies, and friends. This seems to actually broaden the role of deterrence in U.S. national security policy. In contrast, the strategy envisions a much narrower role for preemption. It discusses preemption in the specific context of defeating terrorists and rogue states . It never suggests preemption has a role to play with respect to a rising China or any residual threat posed by Russia. Nor is the argument for preempting terrorists controversial . Instead, the debate in the United States has always been about whether the U.S. government is doing enough to stop

terrorists preemptively, not whether it has to wait for them to attack before acting. But the strategy's argument for preempting rogue states is more debatable. It rests on the disputed claim that deterrence based upon the threat of retaliation is less likely to work against leaders of rogue states, who are more willing to take risks. Ivo Daalder maintains that this conclusion is based more on conjecture than hard evidence. He cites that North Korea, the remaining rogue state that the strategy mentions by name, and Iran, although not mentioned as a rogue state but designated the third member of the "axis of evil," have both responded to deterrence.²⁰

The NSS provides no guidance about when to preempt or the circumstances that justify preemption. Potential targets include a small number of rogue states, and the United States will not use force in all cases to preempt emerging threats. President Bush has said that neither North Korea nor Iran currently is a candidate for U.S.-initiated uses of force. But the circumstances that justify preemption raise another and more likely danger: other countries will employ the preemption rationale as a cover for settling their own national security scores, as Russia has already hinted at with Georgia. Henry Kissinger warns, It cannot be in either the American national interest or the world's interest to develop principles that grant every nation an unfettered right of preemption against its own definition of threats to its security. So this new preemptive strategy could legitimize action that others might emulate and thereby reduce US leverage to convince such countries not to use force. It also undervalues the role of deterrence and increases the likelihood that other countries will use the preemption argument to justify their own national security interests.²¹ All in all, the new preemptive strategy widens the scope for the use of force.

ADVANTAGES OF A PREEMPTION STRATEGY

The advantages the U. S. use of military force preemptively to counter the threats posed by hostile nations and groups include;

- The threats posed by terrorist groups with global reach and rogue states armed with nuclear, chemical or biological weapons are so immediate and potentially destructive that we cannot wait to absorb a first strike before reacting with armed force. A strategy of preemption responds to emerging threats posed to America and American interests by terrorist networks and hostile states and minimizes the likelihood of an attack.
- A preemptive strategy takes advantage of America's unrivaled military power and allows us to protect our national security in a manner and at a time of our own choosing. We should not have to absorb a devastating attack before we strike back.

- The American people have invested heavily in a military capability second to none so that America's service men and women have all the means necessary to defend us against our enemies. We should not hesitate to use this force to strike first if we feel we are threatened.
- This proactive policy will be welcomed by allied nations, even if some may complain publicly about U.S. unilateralism, because the world relies on American power to deal with these threats, whether from terrorist networks such as al-Qaeda or tyrants as was the case with Saddam Hussein, who threaten entire regions.
- The United States should not be expected to relinquish to another body or nation our sovereign right to use military power to protect our national security interests. As was shown in the late stages of the Iraq debate, we cannot count on the U.N. Security Council to address imminent threats effectively. Too many different interests are at work in the Security Council for it to mobilize rapid response in crises or reliably in advance of them.²²

RISKS

Consider the following categorical risks inherent in the new strategy of preemption:

- The preemptive doctrine invites international chaos. America's peace and security have been well served by the U.N. Charter's provision limiting use of force against other nations to self-defense against an armed attack. If the U.S. revives the dangerous doctrine of preemptive war, any nation could then invoke invented threats to justify aggressive wars, making the world far more unstable and unsafe.
- Strategies of preemption can backfire by actually encouraging arms proliferation and creating incentives for nations at odds with the U.S. to seek nuclear, chemical, or biological weapons in order to deter a potential American attack. The resulting ripple of proliferation could heighten world instability.
- A stand-alone U.S. preemption strategy, necessarily relying on intelligence estimates that inevitably include some measure of uncertainty, can put the U.S. in the vulnerable position of bearing all of the costs of preemptive military actions—and potentially being left alone when things go wrong. If the international community disagrees with a U.S. decision to use force preemptively, other nations will likely be reluctant to provide support—military, diplomatic, peacekeeping, financial, intelligence—when we need it.²³

The current NSS fails to acknowledge that a preemptive attack could precipitate the very attacks it seeks to prevent. One danger is the possibility that a rogue state will use its weapons of mass destruction before it loses them—or deliberately gives them to groups that will. A less obvious danger is that terrorists will be able to use the chaos that accompanies war to buy or steal weapons of mass destruction.²⁴ Until the Administration can distinguish justifiable preemption from unlawful aggression in a way that gains widespread adherence from our partners and friends, it risks seeing its words used to justify ends it opposes.

POLICY OPTIONS

Given the many legal and international ramifications what options should policy makers consider? There seems to be three possible ways to proceed;

MAINTAIN AND UPDATE THE CURRENT PREEMPTIVE POLICY AND CLARIFY THE DISTINCTION BETWEEN PREEMPTION AND PREVENTATIVE WAR.

During a 1 October 2002 address to the Manhattan Institute, National Security Advisor Condoleezza Rice declared that preemption is not a new concept. There has never been a moral or legal requirement that a country wait to be attacked before it can address existential threats. The United States has long affirmed the right to anticipatory self-defense -- from the Cuban Missile Crisis in 1962 to the crisis on the Korean Peninsula in 1994: Dr. Rice claims that the Administration's policy does not overturn five decades of doctrine and jettison either containment or deterrence. These strategic concepts can and will continue to be employed where appropriate. But some threats are so potentially catastrophic -- and can arrive with so little warning, by means that are untraceable -- that they cannot be contained. Extremists who seem to view suicide as a sacrament are unlikely to ever be deterred. New technology requires new thinking about when a threat actually becomes imminent. Dr. Rice concludes that as a matter of common sense, the United States must be prepared to take action when necessary, before threats have fully materialized.²⁵

MAINTAIN A POLICY OF DETERRENCE AND CONTAINMENT, RATHER THAN PREEMPTIVE WAR.

Historically, America's leaders rejected using preemptive attacks against major powers like Russia and China in the 1950s and '60s, relying successfully instead on deterrence and containment. Deterrence and containment are more effective against today's threats from small, weak countries rather than preemptive war.²⁶

PREEMPTION SHOULD BE USED ONLY IF THE U.N SECURITY COUNCIL CONCURS.

The U.N. Security Council successfully marshals sanctions and other initiatives to contain potential threats at low cost. When the use of military force becomes necessary, Security Council support for military action grants international legitimacy and legality, thereby including our allies and spreading the costs among partners.

RECOMMENDATION

Maintain and update the current preemptive policy. The NSS should clarify the distinction between preemption and preventative war and limit the conditions under which preemption might be applied in order to preserve its utility and prevent the possibility of encouraging other nations to justify their own preemption. The guidelines presented by the National Security Advisor in her October 2002 speech should be incorporated in the future policy. She emphasized that the risks of waiting must far outweigh the risks of action, principally in cases where a grave threat could arise. Thus preemption should be used only after other remedies have been exhausted.

CONCLUSION

It is clear from the cover letter and the text of the NSS that preemption is an important element of the administration's approach to the overall strategy in the post-September 11 environment. The strategy fails to clarify the distinction between preemption and preventative war or specify when preemptive force should be used. Further, it does not address the inherent risks associated with a preemption strategy.

The administration asserts that deterrence, which prevailed during the Cold War, is unlikely to work with respect to rogue states and terrorists. It argues that in view of the threats posed by terrorist groups with global reach and by rouge states armed with nuclear, chemical or biological weapons, we cannot wait to absorb a first strike before reacting. The doctrine of preemption must be used to deal with these new threats. However, the administration must distinguish justifiable preemption from unlawful aggression in a way that gains widespread adherence among our partners and friends.

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ENDNOTES

¹ Ivo H. Daalder, James M. Lindsay, and James B Steinberg, "The Bush National Security Strategy: An Evaluation Policy Brief #109," October 2002; available from <http://www.brook.edu/comm/policybriefs/pb109.pdf>. accessed 12 Sept 04.

² The definitions of Preemptive Attack, Preemptive War, and Preventative War can be found in Arthur F. Lykke, ed. *Military Strategy: Theory and Application* (Carlisle Barracks, PA: U.S. Army War College, 1993), 386.

³ Frederick C. Mish and John M. Morse, eds., *Merriam-Webster's Collegiate Dictionary* (Springfield, Illinois: Merriam-Webster Inc., 1999), 580.

⁴ Daniel I. Zajac, *The Best Defense is a Good Offense: Preemption, Ramifications for the Department of Defense*, Strategy Research Project (Carlisle Barracks, Pennsylvania: U.S. Army War College, May 2003).

⁵ Clara Portela, BITS Research Note 02.2 June 2002. "Terrorism and the Law of the Use of Force,"; available from <http://www.bits.de/public/researchnote/rn02-2.htm>. accessed 16 Oct 2004.

⁶ Anthony Clark Arend, "International Law and the Preemptive Use of Military Force," *The Washington Quarterly* (April 2003): 99-100; available from http://www.twq.com/03spring/docs/03spring_arend.pdf. accessed 15 Nov 2004.

⁷ Portela, "Terrorism and the Law of the Use of Force."

⁸ Arend, "International Law and the Preemptive Use of Military Force," 90-91.

⁹ Melvyn P. Leffler, "Bush's Foreign Policy," *Foreign Policy* (September/October 2004): 23; available from <http://www.foreignpolicy.com/story/files/story2671.php>. accessed 20 Oct 2004.

¹⁰ Ibid.

¹¹ Ibid., 24.

¹² Ibid.

¹³ Ibid., 3.

¹⁴ Earl H. Tilford, "The War on Terror: World War IV," ROA National Security Report, *The Officer*, 80 (October 2004); available from http://www.roa.org/defense_forum/nsr.asp. accessed 16 Oct 2004.

¹⁵ Ibid., 38.

¹⁶ Ibid., 39.

¹⁷ Michael E. O'Hanlon, Susan E. Rice, and James B Steinberg. "The New National Security Strategy and Preemption," 2002; available from

<http://www.brookings.edu/dybdocroot/views/papers/ohanlon/20021114.pdf> accessed 12 Sept 2004.

¹⁸ Ibid., 3.

¹⁹ Matthew Baldwin, *In Search of U.S. Grand Strategy: National Security Strategy since Goldwater-Nichols*, Senior Honors Thesis (Durham, North Carolina: Duke University); available from <http://www.poli.duke.edu/ugrad/2003%20honors%20theses/baldwinpaper.pdf> accessed 24 Sept 2004.

²⁰ Daalder, "The Bush National Security Strategy."

²¹ O'Hanlon, "The New National Security Strategy and Preemption."

²² The People Speak; "America Debates Its Role in the World;" available from <http://www.thepeoplespeak.org> accessed 24 Sept 2004.

²³ Ibid.

²⁴ O'Hanlon, "The New National Security Strategy and Preemption."

²⁵ Dr. Condoleezza Rice, The Walter Wriston Lecture of the Manhattan Institute, October 1, 2002, New York. (Washington, DC: White House, Office of the Press Secretary, October 1, 2002). Available from <http://www.manhattan-institute.org/html/wl2002.htm> accessed 12 Sept 2004.

²⁶ The People Speak, "America Debates Its Role in the World."

BIBLIOGRAPHY

- Arend, Anthony Clark. "International Law and the Preemptive Use of Military Force," *The Washington Quarterly* (April 2003): 89-93; available from <http://www.twq.com/03spring/docs/03springarend.pdf>.
- Baldwin, Matthew, *In Search of U.S. Grand Strategy: National Security Strategy since Goldwater-Nichols*. Senior Honors Thesis (Durham, North Carolina: Duke University); available from <http://www.poli.duke.edu/ugrad/2003%20honors%20theses/baldwinpaper.pdf> accessed 24 Sept 2004.
- Bush George W., *The National Security Strategy of the United States of America* (Washington, DC: White House, Office of the Press Secretary, September 2002).
- Daalder, Ivo H., James M., Lindsay, and James B Steinberg. "The Bush National Security Strategy: An Evaluation Policy Brief #109," October 2002; available from <http://www.brook.edu/comm/policybriefs/pb109.pdf>. accessed 12 Sept 04.
- Glennon, Michael, "The Fog of Law: Self Defense, Inherence and Incoherence in Article 51 of the United Nations Charter," *Harvard Journal of Law and Public Policy* 25 (2002).
- Knight, Charles. "Essential Elements Missing in the National Security Strategy of 2002" Center for International Relations, Boston University. October 9, 2002.
- Leffler, Melvyn P. "Bush's Foreign Policy," *Foreign Policy* (September/October 2004):22-28 available from <http://www.foreignpolicy.com/story/files/story2671.php>.
- Litwak, Robert and Martin Walker. "What Kind of Empire? The Imperial Republic After 9/11," *The Wilson Quarterly* (Summer 2002).
- Lykke, Arthur F., ed. *Military Strategy: Theory and Application* (Carlisle Barracks, PA: U.S. Army War College, 1993).
- Mish, Fredrick C; and Morse, John M. eds. *Merriam-Webster's Collegiate Dictionary*.(Springfield: Merriam-Webster Inc., 1999).
- O'Hanlon, Michael E., Susan E. Rice, and James B Steinberg. *The New National Security Strategy and Preemption*, 2002; available from <http://www.brookings.edu/dybdocroot/views/papers/ohanlon/20021114.pdf> accessed 12 Sept 2004.
- Podhoretz, Norman. "In Praise of the Bush Doctrine," *Commentary* 114, no. 2 (Sept. 2002).
- Portela, Clara BITS Research Note 02.2 "Terrorism and the Law of the Use of Force." June 2002; available from <http://www.bits.de/public/researchnote/rn02-2.htm>.
- Posen, Barry R. "The Struggle Against Terrorism: Grand Strategy, Strategy, and Tactics," *International Security*, Vol. 26, No. 3 (Winter 2001/02).

Rice, Condoleezza. The Walter Wriston Lecture of the Manhattan Institute, October 1, 2002, New York (Washington, DC: White House, Office of the Press Secretary, October 1, 2002).

The People Speak; "America Debates Its Role in the World;"; available from <http://www.thepeoplespeak.org>.

Tilford, Earl H. "The War on Terror: World War IV," ROA National Security Report, *The Officer*, 80 (October 2004); available from [http://www.roa.org/defense_forum / nsr.asp](http://www.roa.org/defense_forum/nsr.asp). accessed 16 Oct 2004.

Zajac, Daniel I. *The Best Defense is a Good Offense: Preemption, Ramifications for the Department of Defense*, Strategy Research Project (Carlisle Barracks, Pennsylvania: U.S. Army War College, May 2003).